

State of Rhode Island

SENATOR
DAWN EUER
District 13

Room 310
Rhode Island State House
Providence, Rhode Island 02903

OFFICE: 401-276-5589

FAX: 401-222-2967

sen-euer@rilegislature.gov



Senate Chamber

CHAIRPERSON
Committee on
Environment & Agriculture

Committee on
Judiciary

Committee on Rules,
Government Ethics & Oversight

May 7, 2021

Emma Rodvien
Coordinator, Energy Facility Siting Board
Emma.rodvien@puc.ri.gov
89 Jefferson Blvd.
Warwick, RI 02888

Re: Docket #sb-2021-03 Sea3 Providence

Chairman Gerwatowski and Members of the Energy Facilities Siting Board:

Thank you for the opportunity to provide comments on Sea 3 Providence, LLC's Petition for a Declaratory Order currently pending before the Board. **I urge the Board to reject the Petitioner's request for a Declaratory Order and submit the proposed alteration to a complete regulatory review.** Anything less will be a great disservice to the citizens of Rhode Island, particularly when:

- the project is in a waterfront location vulnerable to sea level rise and storm surge, and
- the project is in an area that is already overburdened with polluting facilities that negatively impact the surrounding neighborhoods.

As a threshold matter, I object to the onerous requirements for public comments as set forth in the public notice on this petition. The requirements on this petition differ from the requirements for other petitions and has the potential to chill public participation. These issues are of great public concern and no one should be required to produce a "memorandum of law" to participate in the public comment period. To instill such a requirement is inequitable and unjust and I hope that the Board will reconsider including such requirements in future notices. Furthermore, the Board should publish a corrected notice and extend the comment period to correct this serious issue.

In reviewing the proposed Petition, my understanding is that Sea 3 Providence, LLC is seeking to expand its Liquefied Petroleum Gas (LPG) importation, storage and distribution facility located within the ProvPort facility located on Allens Avenue in Providence. Currently, Sea 3 fills its 19-million-gallon, refrigerated tank of LPG by marine deliveries. In 2020, there were three marine

deliveries totaling 23 million gallons of LPG. After delivery, it is loaded into tanker trucks and delivered to distributors which then service end-use customers.¹

If this project were approved by the Board, and all local, state, and federal agencies, Sea 3 Providence will add rail delivery service through the expansion of operations onto a neighboring parcel of land. They expect to increase its flow of LPG to 80 – 100 million gallons of LPG per year.²

To accomplish that, it proposes first to exercise an option lease for the adjacent land. Then, it will expand the rail line on that track in size and length. This will allow 16 cars per rail shipment per day to the site. LGP would be loaded into 540,000 gallons of new storage, from which it would either be distributed or stored into the existing 19-million-gallon storage facility.³

For context, Sea 3 notes two other facilities in the region that provide rail delivery, storage, and distribution service. There is a North Kingstown facility that brings in six rail cars, twice a day, with 240,000 gallons of storage. There is also a Terryville, Connecticut facility with 540,000 gallons of storage.⁴ Thus, Sea 3 is proposing to add a facility on a site equal to more than twice the size of the nearest similar operation and equal to the largest regional facility identified. Given that this is not a formal application, the Board is being asked to avoid any investigation into the operations of those facilities and others in the region.

The Washington Park neighborhood and its residents have shouldered the health and safety burden of ProvPort, and now Sea 3 is asking the Board to silence them in one more venue.

Sea 3 Providence is asking this Board to declare that their proposed expansion does not constitute an “alteration” of a major energy facility, thereby determining that the project will not “result in a significant impact on the environment, or the public health, safety, and welfare.”⁵ They are asking the Board to make this determination without asking any questions or seeking other perspectives on this project. To be clear, there is no denying that this is a “major energy facility,” which includes “...transfer or storage of...liquefied petroleum gases.”⁶

Their assertion that this is a minimal expansion and not an alteration seems more a matter of opinion than a matter of law. The establishment of a facility of this size anywhere in Rhode Island would require a complete application and analysis by the Board. Information from similar sites is critical to understanding the potential impact of this expansion. I encourage the Board to require that Sea 3 provide further information regarding the individual and cumulative impacts from the operations of those facilities, including conducting its own independent analysis of those impacts, before reaching a final determination on this proposal.

There is no further guidance currently provided in the Board’s policies or procedures in how to guide its interpretation as to what constitutes an alteration. Thus, I encourage the Board to look to other policies that the State has enacted. I note that the Petitioner has not pointed to any other law or court case to establishing a precedent for waiving their application. In the absence of binding or even

¹ Petition for Declaratory Order at Site Report, p.3-5. SB-2021-03 (Energy Facilities Siting Board Mar. 15 2021).

² *Id* at 5-6.

³ *Id* at 8-9.

⁴ *Id* at 7.

⁵ Energy Facility Siting Act, R.I.G.L. §42-98-3(b) (1986).

⁶ *Id* at (d).

persuasive legal precedent, simply relying on their claim that this is not an alteration to an energy facility is dubious at best and a threat to the public's trust in government at worst.

The Board must consider Rhode Island's climate goals in conjunction with the specific statute for which you are charged with enforcement. Specifically, the Rhode Island General Assembly passed and Governor McKee signed into law the Act on Climate legislation.⁷ This law establishes an enforceable goal of 45% reductions in greenhouse gas emissions by 2030 and net zero emissions by 2050.⁸ It recognizes that these are ambitious targets and understand that they are necessary in order to provide for not only a stable and prosperous environment in which future generations can thrive but also the very existence of the land on which this project is proposed.

Act on Climate also specifically empowers all state entities, including this Board, to exercise its purpose in a manner consistent with the Act, such as mitigation, adaptation, and resilience where climate change will affect the entity's duties and responsibilities.⁹ This Board is the first state entity with the opportunity to consider a project with significant climate and climate justice impacts since the enactment of Act on Climate. Given the critical timing of this decision it is imperative the Board fully exercise its legal responsibility to review this proposal.

These are the stakes for the decisions our generation makes for our collective survival and prosperity.

If we skip the application process, the Board will be allowing this project to proceed without reviewing such required application information as:

- Construction timelines,
- Project financing,
- Description and analysis of the cumulative impacts for the facility,
- Data and assumptions underpinning the assertion that there is need for the facility,
- Life-cycle management plan for the facility including how they are protecting public health, safety, and the environment,
- Study of potential alternatives and why they were rejected,
- Potential for formal objection by Providence as the host city.

Avoiding the filing and review of this information flies in the face of both common sense and respect for the community.

Even without the benefit of a complete application, we know that the land on which the facility would be built is existentially vulnerable to climate change and sea level rise.¹⁰ Act on Climate specifically empowers agencies to "assess the vulnerability of infrastructure...to impacts on climate change and implement strategies to relocate or protect and adapt these assets."¹¹ Here we have a facility that is supplying a fuel that is directly responsible for our changing climate and would be vulnerable to those changes.

⁷ Act on Climate, R.I.G.L. §42-6.2-1, et. seq. (2021).

⁸ *Id.* at §42-6.2-2(i)(B)–(D).

⁹ *Id.* at §42-6.2-8.

¹⁰ Petition for Declaratory Order at Site Report, Figure 1: Project Area. Note that the diagonal lines indicating that the project area is in a FEMA Flood Hazard zone. At a minimum, given the site's location it should be evaluated under the Coastal Resource Management Council's maps for expected impact of predicted sea level rise.

¹¹ Act on Climate at §42-6.2-3(7).

Sea 3's petition cites projections for on-going growth in demand for LPG. We cannot rely solely on their claim.¹² Even now, Rhode Island is pursuing policies to displace the use of LPG in favor of more efficient and low-cost heat pumps. *This is a stranded asset waiting to happen, where the company will be left with a more than \$20 million investment in infrastructure for a fuel that is no longer in demand. Following the playbook of so many other fossil fuel companies, it will only be a matter of time before they demand that the public pay them back or avoid future climate action because it is a risk to their investment – an investment that they know is contributing to the global climate crisis.*

Sea 3 alleges that since the facility is deep within ProvPort and that there will be no air impacts, ignoring the simple reality that the railcars are not teleporting there. The community already faces asthma rates in the top percentile of the nation. The Board needs more information to assess the cumulative impact of additional rail cars traveling through to reach ProvPort.

Furthermore, increased land-based transportation worsens the air quality in an already-burdened community. As we know, the air we breathe knows no boundaries. Sea 3 alleges that since they have not reached their daily maximum of 244 trucks that the additional trucks will have no impact either to the health of the community or to traffic loads. Health and safety are threatened by the increase due to altering the facility, not that they are able to keep overall traffic within limit set years ago.

Their lack of candor in identifying these threats alone should be sufficient to require further inquiry into their assertions. Before we see another significant investment and further expansion of fossil fuel infrastructure it must be subject to a full application and public review. I urge the Board to reject the Petitioner's request and find that the proposed expansion is an "alteration" of a major energy facility subject to the full review of this Board.

Sincerely,



Dawn Euer, Senator District 13
Chair, Senate Committee on Environment & Agriculture

¹² See Atlantic Northeast Rails and Ports, "LPG: New England's Propane Supply Riskiest in the Country." <https://railsandports.com/2020/10/lpg-new-englands-supply-at-highest-risk-in-the-country/>. Accessed May 7, 2021. This is the first entry of a Google Search for "New England LPG facilities," and on its first page provides a prediction of diminishing propane consumption across all New England states. While this information should also be vetted, it is the Board's responsibility to consider evidence contrary to that provided by the Petitioner.